Supreme Court, U.S.
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No. 96-85

**IN THE**

**SUPREME COURT OF THE UNITED STATES**

**October Term, 1995**

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KAREN McCRACKEN,

*Petitioner*,

v.

COSHOCTON COUNTY and DAVID CORBETT,

*Respondents*.

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

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# PETITIONER'S REPLY BRIEF

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Petitioner Karen McCracken respectfully requests that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in the above entitled case on April 17, 1996. Respondents' arguments highlight why this Court should issue a writ of certiorari on the question presented in this case.

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## REASONS FOR GRANTING THIS PETITION FOR CERTIORARI

The Respondents contend that a Writ of Certiorari should not be granted in this matter because the Petitioner allegedly "chooses to ignore much of the evidence presented to the District Court." *See* Respondents' Brief in Opposition at 2. Specifically, the Respondents assert that the Petitioner has ignored the affidavit of Respondent Sheriff Corbett. *Id.* at 8.[1] However, with their argument, the Respondents are making the same mistake made by the courts below: mistakenly assuming that Rule 56 of the Federal Rules of Civil Procedure requires the Petitioner to *disprove* the Respondents' evidence in order to maintain her action in the face of a motion for summary judgment.

In fact, Rule 56 states that summary judgment should be granted *only* if the record evidence shows that there is "*no* genuine issue as to *any* material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P., Rule 56(c) (emphasis added). Indeed, this Court has repeatedly rejected the Respondents' argument that the nonmoving party is required to disprove the moving party's evidence in order to survive a motion for summary judgment:

> [i]t is true that the issue of material fact required by Rule 56(c) to be present to entitle a party to proceed to trial *is not required to be resolved conclusively in favor of the party asserting its existence*; rather, all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or

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[1] In his affidavit, Sheriff Corbett provides self-serving testimony that he was not aware of an order to delay Petitioner's medical treatment until after her Grand Jury testimony, nor was he contacted concerning her need for medical treatment. *See* Respondents' Brief in Opposition at 8.

> judge to resolve the parties' differing versions of the truth at trial.

*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986) (emphasis added) (quoting *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 288-89 (1968)). As applied to this matter, *Anderson* specifically holds that to have been entitled to proceed to trial in the face of Respondents' motion for summary judgment, the Petitioner need not have been able to "resolve conclusively" that Respondent Corbett's affidavit was untruthful. Instead, *Anderson* specifically holds that to have been entitled to proceed to trial, the Petitioner was only required to produce "sufficient evidence supporting the claimed factual dispute" such that a trial is needed to resolve the differing versions of the truth.

In the trial court, the Petitioner provided ample evidence of the claimed factual dispute: that the Respondents were deliberately indifferent to her serious medical needs and delayed her medical treatment until after she testified before a Grand Jury.[2] According to the District Court opinion, by the time she testified before the Grand Jury, Petitioner "was very weak, dehydrated, and needed help standing and walking." *See* District Court Opinion, Petition Appendix at A-8. Further, according to the Bethesda Emergency Room Report, "it was clear that the patient was sick," as the Petitioner had cramping pain and diarrhea four times a day, had eaten only a couple of crackers and had lost some weight. *See* Record at 70. Therefore, there was ample record evidence illustrating the degree of the Petitioner's illness on Friday, February 12, such that a reasonable jury could conclude that the Respondents

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[2]As explained in the Petition, there was no dispute in the lower courts that prison officials violate a prisoner's Due Process and Eighth Amendment rights under 42 U.S.C. § 1983 by intentionally delaying medical treatment out of a deliberate indifference to a prisoner's serious medical needs. *See* Petition at 6; *Estelle v. Gamble*, 429 U.S. 97 (1976).

had knowledge of the Petitioner's medical needs before she was scheduled to testify in front of the Grand Jury yet were deliberately indifferent to that knowledge by delaying her medical treatment until after she testified.

The Respondents argue to this Court that a Writ of Certiorari should not be granted in this matter because the Petitioner 'ignored' Respondent Corbett's affidavit. Further, the courts below relied solely on the evidence contained in that affidavit in concluding that the Respondents were entitled to summary judgment. However, based on this Court's opinion in *Anderson v. Liberty Lobby*, the Petitioner states that Rule 56 does not require her to *disprove* Respondent Corbett's affidavit in order to maintain her action in the face of the Respondents' motion for summary judgment. Therefore, the Petitioner respectfully requests that this Court review the lower courts' opinions in this case in order to remind those courts as to the proper burden that must be met by a party moving for a summary judgment as well as to vindicate the Petitioner's right to have her claim heard by a jury of her fellow citizens.

## CONCLUSION

For all of the reasons stated herein and in the Petition, the Petitioner respectfully contends that the Sixth Circuit has sanctioned a departure from the accepted and usual course of judicial proceedings by the lower court so as to call for an exercise of this Court's supervisory power. As a consequence, the Petitioner respectfully contends that this petition should be granted or, alternatively, that the decision below should be summarily reversed.

Respectfully Submitted,

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